

E-FILED
Bexar County, County Clerk
Gerard Rickhoff
Accepted Date 3/13/2017 9 36 05 AM
Accepted By Allison Humes/s/
/s/ Allison Humes
Deputy Clerk

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA

V.

TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL

§
§
§
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§
§
§

IN THE COUNTY COURT

AT LAW NO. CC# 10

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION WITH REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ALBERT F. CASTANEDA, Plaintiff, and complains of TRAVELERS INDEMNITY COMPANY and LORINA MARSHALL, Defendants, and for cause of action respectfully shows as follows:

I.

Discovery

Plaintiff ALBERT F. CASTANEDA affirmatively pleads that discovery should be conducted under Level 2 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.

Parties

Plaintiff, ALBERT F. CASTANEDA, is an individual whose address is 3131 Jane Ellen Street, San Antonio, Texas 78237, and will hereinafter be referred to as "PLAINTIFF." The last three numbers of Albert F. Castaneda's social security number are 513.

Defendant, TRAVELERS INDEMNITY COMPANY (hereinafter "Travelers" or collectively "Defendants"), is a corporation chartered by The State of Texas and licensed by the Texas Department of Insurance. Defendant TRAVELERS INDEMNITY COMPANY may be served with process upon its registered agent for service at: Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218. Service of process is requested by process as authorized by this Court.

Defendant, LORINA MARSHALL, is an individual employed by and acting on behalf of



Defendant Travelers indemnity Company and is a resident of the state of Texas. This Defendant may be served with process at the following address: 8711 N. Freeport Pkwy., C 3, Houston, Texas 77242-2927, or wherever she may be found. Service of process is requested by private process as authorized by this Court.

III.
Misnomer/Alter-Ego

In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein.

IV.
Venue

Venue is properly had in Bexar County, Texas pursuant to the general venue provision of §15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, in that all or a substantial part of the events or omissions giving rise to this cause of action occurred in Bexar County, Texas; and pursuant to the permissive venue provision of §15.032 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, in that this is a suit on a policy brought against an accident insurance company, wherein the underlying loss forming basis of this cause of action occurred in Bexar County, Texas.

V.
Jurisdiction

In Personam: The Court has *in personam* jurisdiction over Travelers Indemnity Company because Defendant is chartered by The State of Texas and is therefore a resident of The State of Texas; and/or Defendant is a domestic corporation licensed in and by The State of Texas and have a principal office within The State of Texas; and/or because Defendant purposefully availed itself of the privilege of conducting activities within The State of Texas; and/or because Defendant purposefully established more than minimum contacts with The State of Texas by conducting and/or doing business within The State of Texas.

Subject Matter: The Court has subject matter jurisdiction over the case at bar because the Plaintiff believes and alleges that she has been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court.

VI.
Standing

On November 6, 2015, Plaintiff was driving a company vehicle owed and maintained by Maruti Transit Group. As Plaintiff was traveling southbound on IH-35 in San Antonio, Texas, he was struck by Christopher Arguijo (a non-party to this suit). As a result of the negligence of under-insured motorist Christopher Arguijo (a non-party to this suit), Plaintiff sustained bodily injuries.

At such time there existed a contract in the form of a policy of insurance by and between Defendant Travelers Indemnity Company, as insurer for Maruti Transit Group. This policy covered losses attributable to the ownership, maintenance or use of a vehicle by an uninsured/underinsured motorist. Defendants' failure to perform under the policy of insurance contract, and pursuant to applicable law, creates standing for Plaintiff to bring this instant cause of actions. The factual allegations below establish that Plaintiff has a cause of action against under-insured motorist Christopher Arguijo (a non-party to this suit) and thus by consequence has a cause of action against the Defendants herein.

VII.
Conditions Precedent

Plaintiff asserts that all conditions precedent to the bringing of this cause of action have been performed or have occurred prior to the filing of the cause of action at bar. Alternatively, to the extent any conditions have not been met, failure to meet said conditions, if any, has not prejudiced Defendants.

VIII.
Factual Allegations

On November 6, 2015, Plaintiff was lawfully operating his motor vehicle and was traveling southbound on IH-35 in San Antonio, Bexar County, Texas. As Plaintiff was traveling on IH-35 he had to come to stop due to traffic ahead of him. Christopher Arguijo (a non-party to this suit) was also driving his vehicle on IH-35 behind Plaintiff's vehicle, when suddenly and without warning Christopher Arguijo failed to control his vehicle and rear-ended Plaintiff's vehicle. By failing to stop Christopher Arguijo failed to yield the way of right to Plaintiff and negligently collided into Plaintiff's vehicle. The collision was caused by the negligence of Christopher Arguijo. As a result of the negligence of under-insured motorist Christopher Arguijo, Plaintiff sustained bodily injuries. Plaintiff was caused to suffer serious and permanent injuries and damages, which far exceeded the amount of the liability insurance available. Plaintiff settled a claim for liability coverage and payment with Christopher Arguijo's insurance company. Mr. Arguijo's carrier carried liability limits of only \$30,000.00 and tendered \$30,000.00 to settle this claim with Plaintiff.

Plaintiff also timely filed a claim for underinsured motorist coverage with Defendant Travelers. Unfortunately, claims representative Lorina Marshall was assigned to Plaintiff's claim. Lorina Marshall on behalf and while in the course and scope of her employment with Travelers was responsible for the evaluation and handling of the underinsured motorist claims.

Permission to settle the liability claim as well as a request for the underinsured motorist coverage was sent to Travelers on February 5, 2016. Plaintiff's medical bills far exceed the amount of the minimum policy that was tendered and the amounts offered by Progressive Insurance. Plaintiff's demand letter detailed not only the care that he had as a result of the wreck but also the care that has been recommended for the future. Plaintiff has attempted to get Travelers Indemnity Company to place additional money toward the claim under the contract of

the underinsured motorist coverage and act according to its terms and according to governing law with respect to the Plaintiff. Defendants have ultimately failed to meet this responsibility. Defendants have failed and refused, and still fail and refuse to perform and pay the Plaintiff for the benefits to which he is entitled under the terms of the contract outlining the policy provisions between the Plaintiff and Travelers.

Lorina Marshall acting on behalf of Travelers has refused to consider the medical bills over the amount of the policy limits that were tendered and have refused to consider the additional medical treatment that has been recommended and documented for the Plaintiff. Lorina Marshall was acting as the agent for Travelers and within the course and scope of her employment with Travelers. This adjuster's conduct can only be characterized as incompetent and intentional. Either way, the actions of Lorina Marshall while in the course and scope of her employment for Travelers was ratified by the company.

IX.

Breach of Contract - Defendant Travelers Indemnity Company

Defendant Travelers Indemnity Company is liable for breach of the underinsured motorist provision of the policy contract. Travelers Indemnity Company has a legal obligation to pay insurance benefits that fairly compensate Plaintiff, but despite various demands, has failed and/or refused to do so. Traveler Indemnity Company has been given all items necessary to evaluate this claim. Such failure(s) and/or refusal(s) constitute a breach of its contract and said breach has directly resulted in damages to Plaintiff.

X.

**Cause of Action – Defendant Travelers Indemnity Company
Breach of the Common Law Duty of Good Faith and Fair Dealing**

Defendant Travelers Indemnity Company breached its duty of good faith and fair dealing in relation to Plaintiff's claim by failing and/or refusing to settle this matter for the amount of money necessary to properly compensate Plaintiff for his damages, despite ample evidence that

the worth of the claim exceeded all applicable insurance coverages and ample opportunity to settle. In addition, Defendant has failed to attempt to effectuate a proper settlement in good faith after liability had become reasonably clear. Said breach was a proximate cause of damages to Plaintiff.

XI.

**Cause of Action- Defendants Travelers Indemnity Company and Lorina Marshall
Violations of Chapter 541 of the TEXAS INSURANCE CODE
[formerly ART. 21.21 of the TEXAS INSURANCE CODE]**

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Travelers Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

- (1) the terms of the policy; or,
- (2) the benefits or advantages promised by the policy.

§541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder;

§541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

XII.

**Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall
Violations of Chapter 542, Subchapter B, of the TEXAS INSURANCE CODE
[formerly ART. 21.21-2 and 21.55 of the TEXAS INSURANCE CODE]**

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Allstate Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy.

§542.003(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(b) of the TEXAS INSURANCE CODE];

b. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

§542.003(3) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(c) of the TEXAS INSURANCE CODE];

c. Not attempting in good faith to effect a prompt, fair and equitable settlement of a claim submitted in which liability has become reasonably clear.

§542.003(4) of the TEXAS INSURANCE CODE [formerly 21.21-2, §2(d) of the TEXAS INSURANCE CODE]; and

d. compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder.

§542.003(5) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(e) of the TEXAS INSURANCE CODE].

XIII.

Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall Violations of TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT

Defendants' conduct, acts and omissions as herein before described constitute a violation of this Act, which was the producing cause of damages to Plaintiff. Specifically, Plaintiff alleges that Defendants' conduct violated the TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

- (1) the terms of the policy; or,
- (2) the benefits or advantages promised by the policy.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

Pleading further, Plaintiff alleges that, in addition to the aforementioned list of violations, the actions of Defendants constituted an “unconscionable action or course of action.”

Further, the conduct of Defendants as described in this petition was committed knowingly. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which Plaintiff complains.

XIV.

Timing of Claims of Plaintiff

Defendants have already breached the duty of good faith and fair dealing owed to Plaintiff, and has already violated the Texas Insurance Code and Texas Deceptive Trade Practices Act provisions stated above. These breaches occurred at the time that Defendants ignored Plaintiff's claim and failed and/or refused to make a reasonable offer to settle the claim. Accordingly the breaches of the duty of good faith and fair dealing and the above referenced statutes have already occurred and liability for same has already attached. It is anticipated Defendants will soon try to make additional token offers on this case, solely for the purpose of attempting to obtain a severance of the extra-contractual claims. The breaches of the duty of good faith and fair dealing and the violations of the Texas Insurance Code/Insurance Contract/Texas Deceptive Trade Practices Act, however, have already occurred and any further actions are irrelevant in the imposition of liability under these theories, statutes, and contracts. Further, Plaintiff contends that if such token offers are made only to obtain a severance of the

extra-contractual claims, that such offers in and of themselves would be bad faith and a violation of the Texas Insurance Code.

XV.
Damages

Plaintiff alleges that as a direct and proximate result of the conduct, failures, refusals, breaches, negligent acts, and/or omissions of the Defendants, Plaintiff is entitled to recover at least the following damages:

- a. Reasonable and necessary health care expenses incurred in the past;
- b. Reasonable and necessary health care expenses which, in all reasonable probability, will be incurred in the future;
- c. Physical pain and suffering sustained in the past;
- d. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
- e. Mental anguish suffered in the past;
- f. Mental anguish which, in all reasonable probability, will be suffered in the future;
- g. Physical impairment sustained in the past;
- h. Physical impairment which, in all reasonable probability, will be sustained in the future;
- i. Disfigurement which, in all reasonable probability, will be sustained in the future;
- j. Reasonable and necessary attorneys' fees;
- k. Costs of court;
- l. Pre-judgment and Post-judgment interest at the highest legal rate; and,
- m. All other relief to which Plaintiff shows herself to be entitled.

Said damages are of an amount within the Court's jurisdictional limits. The Court has subject matter jurisdiction over the case at bar because Plaintiff believes and alleges that he has

been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court; Plaintiff asks the amount of his verdict and damages be determined by a jury of his peers. Plaintiff asks the jury to award a fair and reasonable amount based on the evidence presented at trial. Plaintiff leaves the amount of that verdict to the discretion of the jury. The Texas Rules of Civil Procedure require Plaintiff to plead that her case falls under a particular category as outlined by the Texas Rules of Civil Procedure. In order to comply with this procedural requirement and to accommodate any potential verdict that could be awarded by a jury. Plaintiff hereby pleads and places his case into the category of suits seeking relief over \$200,000.00 but not more than \$1,000,000.00, including damages, penalties, costs, expenses, and pre-judgment interest. Plaintiff hereby further demands judgment for all relief to which he is entitled.

XVI.
Costs And Interest

It was necessary for Plaintiff to expend monies as the costs of court requisite to prosecute this cause of action. Therefore, an award of these costs to Plaintiff is authorized by:

- a. Rule 131 of the TEXAS RULES OF CIVIL PROCEDURE;
- b. §541.152(a)(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §16(b)(1) of the TEXAS INSURANCE CODE];
- c. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- e. §31.007 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE; and/or,
- f. Equity.

Plaintiff is entitled to pre-judgment interest pursuant to:

- a. §§302.001 and 302.002 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,

- c. Equity.

Plaintiff is entitled to post-judgment interest pursuant to:

- a. §§ 304.002 and 304.003 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,
- c. Equity.

XVII.
Attorney's Fees

It was necessary for Plaintiff to hire the attorneys whose names appear below for prosecution of these causes of action. Therefore, an award of reasonable attorneys' fees is authorized by:

- a. §541.152 of the TEXAS INSURANCE CODE [formerly ART. 21.21, §16(b) of the TEXAS INSURANCE CODE];
- b. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- c. §38.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE;
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- e. By written contract by and between the parties; and/or,
- f. Equity.

Said attorney's fees should be taxed against Defendants as costs in this case, where allowed by law. Further, such award is justified to include any appeals to all appellate courts.

XVIII.
Jury Request

Plaintiff respectfully requests the Court to order a trial on the merits by jury. Plaintiff has deposited the jury fee with the clerk of this court and has, in all respects, complied with RULE 216 of the TEXAS RULES OF CIVIL PROCEDURE.

XIX.
Requests For Disclosure

Under the authority of RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests Defendants to disclose, within 50 days of the service of this petition and request, the information or material described in RULE 194.2(a)-(l).

PRAYER

WHEREFORE, Plaintiff prays that the Defendants be cited to appear and answer, and that on final trial, the Honorable Court render judgment in favor of the Plaintiff, to wit:

- a. Damages, actual, special, exemplary and otherwise, not to exceed the policy limits in question;
- b. All Costs of Court;
- c. Both pre-judgment and post-judgment interest at the maximum legal rate;
- d. Reasonable attorney's fees, with conditional sums for the services of Plaintiff's attorney in the event of subsequent appeals; and,
- e. For such other and further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Blvd., Ste. 102
San Antonio, Texas 78216
Telephone No: (210) 444-4444
Facsimile No: (210) 785-0806

BY: 

J. SCOTT MECHLER
State Bar No. 24055952
smechler@jeffdavislawfirm.com

ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET
2017CV01542

CC# 10

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLE D

(e.g., John Smith v. All American Insurance Co., In re Mary Ann Jones, In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: <u>J. Scott Mechler</u> Email: <u>smechler@joldavislawfirm.com</u> Address: <u>10500 Heritage Blvd. Ste 102</u> Telephone: <u>210-444-4444</u> City/State/Zip: <u>San Antonio, Texas 78216</u> Fax: <u>210-785-0806</u> Signature: <u>[Signature]</u> State Bar No.: <u>24055952</u> (Attach additional page as necessary to list all parties)		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Albert F. Castaneda</u> Defendant(s)/Respondent(s): <u>Travelers Indemnity Company, and Lorina Marshall</u>		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input checked="" type="checkbox"/> Debu Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debu Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debu Contract Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____		Probate & Mental Health Probate Wills Interstate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Interstate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order-Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case): <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input checked="" type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

State court action 0014

PRIVATE PROCESS

"The State of Texas"

NO. 2017CV01542ALBERT F CASTANEDAPlaintiff
vs.

IN THE COUNTY COURT AT

LAW NO. 10

BEXAR COUNTY, TEXAS

TRAVELERS INDEMNITY COMPANY ET AL

Defendant

NOTICE

Citation Directed to: TRAVELERS INDEMNITY COMPANY
 BY SERVING ITS Registered Agent, CORPORATION SERVICE COMPANY
 211 E 7TH STREET STE 620
 AUSTIN, TX 78701

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 10TH day of March, 2017.
 ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16TH DAY OF March A.D., 2017.

JAMES SCOTT MECHLER

Attorney/PLAINTIFF

address 10500 HERITAGE BLVD 102
SAN ANTONIO, TX 78216

GERARD RICKHOFF

County Clerk of Bexar County, Texas

Bexar County Courthouse

100 Dolorosa Suite 104

San Antonio, Texas 78205

By: [Signature] Deputy
JACOBO REYES-MARCHENA

OFFICER'S RETURN

Came to hand 3-20-17 day of Gerry Udgum, A.D. 2017, at 3:20 o'clock PM.
 and executed the 3-20-17 day of Gerry Udgum, A.D. 2017, in San Antonio
 at 3:20 o'clock PM. by delivering to Gerry Udgum
 in person a true copy of this citation together with the accompanying copy of plaintiff's
 petition. Served at San Antonio, TX

I traveled
\$

miles in the execution of this citation. fees:
 Mileage Total \$

Serving citation

San Antonio County, TexasBy [Signature]

The State of Texas

NON - PEACE OFFICER VERIFICATION

VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO this 16TH day of March, 2017.2017CV01542
(DKC001)

NOTARY PUBLIC, STATE OF TEXAS

State court action 0015

FILE COPY

PRIVATE PROCESS

"The State of Texas"

NO. 2017CV01542FILED IN MY OFFICE
GERARD RICKHOFF
COUNTY CLERK BEXAR CO.ALBERT F CASTANEDAPlaintiff
vs.2017 MAR 21 AM 9:02
IN THE COUNTY COURT ATLAW NO. 10

BEXAR COUNTY, TEXAS

TRAVELERS INDEMNITY COMPANY ET AL

Defendant

NOTICE

Citation Directed to: TRAVELERS INDEMNITY COMPANY
BY SERVING ITS Registered Agent, CORPORATION SERVICE COMPANY
211 E 7TH STREET STE 620
AUSTIN, TX 78701

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 10TH day of March, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16TH DAY OF March A.D., 2017.



GERARD RICKHOFF
County Clerk of Bexar County, Texas
Bexar County Courthouse
100 Dolorosa Suite 104
San Antonio, Texas 78205

By: [Signature] Deputy
JACOBO REYES-MARCHENA

JAMES SCOTT MECHLER

Attorney/PLAINTIFF

address 10500 HERITAGE BLVD 102
SAN ANTONIO, TX 78216

OFFICER'S RETURN

Came to hand 22nd day of March, A.D. 2017, at 7:00 o'clock P.M.
and executed the 23rd day of March, A.D. 2017, in Travis County
at 1:40 o'clock P.M. by delivering to Travelers Indemnity Company/Corporation Service Company
in person a true copy of this citation together with the accompanying copy of plaintiff's Sue Vertreal
petition. Served at 211 E. 7th St. Ste. 620 Austin, TX 78701

I traveled
\$miles in the execution of this citation. fees:
Mileage Total \$

Serving citation

[Signature]
SCH4196 County, Texas
By Paul B. Logan

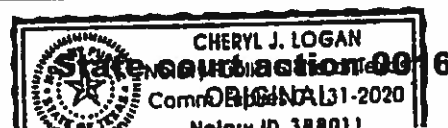
The State of Texas

NON - PEACE OFFICER VERIFICATION

VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO this 24 day of Mar, 2017.2017CV01542
(OKC001)

[Signature: Cheryl J. Logan]
NOTARY PUBLIC, STATE OF TEXAS



PRIVATE PROCESS

"The State of Texas"

NO. 2017CV01542ALBERT F CASTANEDAPlaintiff
vs.

IN THE COUNTY COURT AT

LAW NO. 10

BEXAR COUNTY, TEXAS

TRAVELERS INDEMNITY COMPANY ET AL

Defendant

NOTICE

Citation Directed to: TRAVELERS INDEMNITY COMPANY
 BY SERVING ITS Registered Agent, CORPORATION SERVICE COMPANY
 211 E 7TH STREET STE 620
 AUSTIN, TX 78701

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 10TH day of March, 2017.
 ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16TH DAY OF March A.D., 2017.

JAMES SCOTT MECHLER

Attorney/PLAINTIFF
 address 10500 HERITAGE BLVD 102
 SAN ANTONIO, TX 78216



GERARD RICKHOFF
 County Clerk of Bexar County, Texas
 Bexar County Courthouse
 100 Dolorosa Suite 104
 San Antonio, Texas 78205

By: [Signature] Deputy
 JACOBO REYES-MARCHENA

OFFICER'S RETURN

Came to hand day of , A.D. , at o'clock .M.
 and executed the 23 day of March, A.D. 2017, in
 at o'clock .M. by delivering to
 in person a true copy of this citation together with the accompanying copy of plaintiff's
 petition. Served at

I traveled miles in the execution of this citation. fees: Serving citation
 \$ Mileage Total \$

 County, Texas
 By

The State of Texas

NON - PEACE OFFICER VERIFICATION
 VERIFICATION OF RETURN (IF NOT SERVED BY PEACE OFFICER)

SWORN TO this day of , .

2017CV01542
 (DKC001)

NOTARY PUBLIC, STATE OF TEXAS

State court action 0017

E-FILED
Bexar County, County Clerk
Gerard Rickhoff
Accepted Date: 3/13/2017 9:36:05 AM
Accepted By: Allison Humes/s/
/s/ Allison Humes
Deputy Clerk

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA

IN THE COUNTY COURT

V.

AT LAW NO. CC# 10

TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION WITH REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ALBERT F. CASTANEDA, Plaintiff, and complains of TRAVELERS INDEMNITY COMPANY and LORINA MARSHALL, Defendants, and for cause of action respectfully shows as follows:

I.

Discovery

Plaintiff ALBERT F. CASTANEDA affirmatively pleads that discovery should be conducted under Level 2 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.

Parties

Plaintiff, ALBERT F. CASTANEDA, is an individual whose address is 3131 Jane Ellen Street, San Antonio, Texas 78237, and will hereinafter be referred to as "PLAINTIFF." The last three numbers of Albert F. Castaneda's social security number are 513.

Defendant, TRAVELERS INDEMNITY COMPANY (hereinafter "Travelers" or collectively "Defendants"), is a corporation chartered by The State of Texas and licensed by the Texas Department of Insurance. Defendant TRAVELERS INDEMNITY COMPANY may be served with process upon its registered agent for service at: Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218. Service of process is requested by private process as authorized by this Court.

Defendant, LORINA MARSHALL, is an individual employed by and acting on behalf of

Defendant Travelers indemnity Company and is a resident of the state of Texas. This Defendant may be served with process at the following address: 8711 N. Freeport Pkwy., C 3, Houston, Texas 77242-2927, or wherever she may be found. Service of process is requested by private process as authorized by this Court.

III.
Misnomer/Alter-Ego

In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein.

IV.
Venue

Venue is properly had in Bexar County, Texas pursuant to the general venue provision of §15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, in that all or a substantial part of the events or omissions giving rise to this cause of action occurred in Bexar County, Texas; and pursuant to the permissive venue provision of §15.032 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, in that this is a suit on a policy brought against an accident insurance company, wherein the underlying loss forming basis of this cause of action occurred in Bexar County, Texas.

V.
Jurisdiction

In Personam: The Court has *in personam* jurisdiction over Travelers Indemnity Company because Defendant is chartered by The State of Texas and is therefore a resident of The State of Texas; and/or Defendant is a domestic corporation licensed in and by The State of Texas and have a principal office within The State of Texas; and/or because Defendant purposefully availed itself of the privilege of conducting activities within The State of Texas; and/or because Defendant purposefully established more than minimum contacts with The State of Texas by conducting and/or doing business within The State of Texas.

Subject Matter: The Court has subject matter jurisdiction over the case at bar because the Plaintiff believes and alleges that she has been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court.

VI.
Standing

On November 6, 2015, Plaintiff was driving a company vehicle owed and maintained by Maruti Transit Group. As Plaintiff was traveling southbound on IH-35 in San Antonio, Texas, he was struck by Christopher Arguijo (a non-party to this suit). As a result of the negligence of under-insured motorist Christopher Arguijo (a non-party to this suit), Plaintiff sustained bodily injuries.

At such time there existed a contract in the form of a policy of insurance by and between Defendant Travelers Indemnity Company, as insurer for Maruti Transit Group. This policy covered losses attributable to the ownership, maintenance or use of a vehicle by an uninsured/underinsured motorist. Defendants' failure to perform under the policy of insurance contract, and pursuant to applicable law, creates standing for Plaintiff to bring this instant cause of actions. The factual allegations below establish that Plaintiff has a cause of action against under-insured motorist Christopher Arguijo (a non-party to this suit) and thus by consequence has a cause of action against the Defendants herein.

VII.
Conditions Precedent

Plaintiff asserts that all conditions precedent to the bringing of this cause of action have been performed or have occurred prior to the filing of the cause of action at bar. Alternatively, to the extent any conditions have not been met, failure to meet said conditions, if any, has not prejudiced Defendants.

VIII.
Factual Allegations

On November 6, 2015, Plaintiff was lawfully operating his motor vehicle and was traveling southbound on IH-35 in San Antonio, Bexar County, Texas. As Plaintiff was traveling on IH-35 he had to come to stop due to traffic ahead of him. Christopher Arguijo (a non-party to this suit) was also driving his vehicle on IH-35 behind Plaintiff's vehicle, when suddenly and without warning Christopher Arguijo failed to control his vehicle and rear-ended Plaintiff's vehicle. By failing to stop Christopher Arguijo failed to yield the way of right to Plaintiff and negligently collided into Plaintiff's vehicle. The collision was caused by the negligence of Christopher Arguijo. As a result of the negligence of under-insured motorist Christopher Arguijo, Plaintiff sustained bodily injuries. Plaintiff was caused to suffer serious and permanent injuries and damages, which far exceeded the amount of the liability insurance available. Plaintiff settled a claim for liability coverage and payment with Christopher Arguijo's insurance company. Mr. Arguijo's carrier carried liability limits of only \$30,000.00 and tendered \$30,000.00 to settle this claim with Plaintiff.

Plaintiff also timely filed a claim for underinsured motorist coverage with Defendant Travelers. Unfortunately, claims representative Lorina Marshall was assigned to Plaintiff's claim. Lorina Marshall on behalf and while in the course and scope of her employment with Travelers was responsible for the evaluation and handling of the underinsured motorist claims.

Permission to settle the liability claim as well as a request for the underinsured motorist coverage was sent to Travelers on February 5, 2016. Plaintiff's medical bills far exceed the amount of the minimum policy that was tendered and the amounts offered by Progressive Insurance. Plaintiff's demand letter detailed not only the care that he had as a result of the wreck but also the care that has been recommended for the future. Plaintiff has attempted to get Travelers Indemnity Company to place additional money toward the claim under the contract of

the underinsured motorist coverage and act according to its terms and according to governing law with respect to the Plaintiff. Defendants have ultimately failed to meet this responsibility. Defendants have failed and refused, and still fail and refuse to perform and pay the Plaintiff for the benefits to which he is entitled under the terms of the contract outlining the policy provisions between the Plaintiff and Travelers.

Lorina Marshall acting on behalf of Travelers has refused to consider the medical bills over the amount of the policy limits that were tendered and have refused to consider the additional medical treatment that has been recommended and documented for the Plaintiff. Lorina Marshall was acting as the agent for Travelers and within the course and scope of her employment with Travelers. This adjuster's conduct can only be characterized as incompetent and intentional. Either way, the actions of Lorina Marshall while in the course and scope of her employment for Travelers was ratified by the company.

IX.

Breach of Contract - Defendant Travelers Indemnity Company

Defendant Travelers Indemnity Company is liable for breach of the underinsured motorist provision of the policy contract. Travelers Indemnity Company has a legal obligation to pay insurance benefits that fairly compensate Plaintiff, but despite various demands, has failed and/or refused to do so. Traveler Indemnity Company has been given all items necessary to evaluate this claim. Such failure(s) and/or refusal(s) constitute a breach of its contract and said breach has directly resulted in damages to Plaintiff.

X.

**Cause of Action – Defendant Travelers Indemnity Company
Breach of the Common Law Duty of Good Faith and Fair Dealing**

Defendant Travelers Indemnity Company breached its duty of good faith and fair dealing in relation to Plaintiff's claim by failing and/or refusing to settle this matter for the amount of money necessary to properly compensate Plaintiff for his damages, despite ample evidence that

the worth of the claim exceeded all applicable insurance coverages and ample opportunity to settle. In addition, Defendant has failed to attempt to effectuate a proper settlement in good faith after liability had become reasonably clear. Said breach was a proximate cause of damages to Plaintiff.

XI.

**Cause of Action- Defendants Travelers Indemnity Company and Lorina Marshall
Violations of Chapter 541 of the TEXAS INSURANCE CODE
[formerly ART. 21.21 of the TEXAS INSURANCE CODE]**

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Travelers Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

- (1) the terms of the policy; or,
- (2) the benefits or advantages promised by the policy.

§541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder;

§541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

XII.

Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall Violations of Chapter 542, Subchapter B, of the TEXAS INSURANCE CODE [formerly ART. 21.21-2 and 21.55 of the TEXAS INSURANCE CODE]

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Allstate Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy.

§542.003(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(b) of the TEXAS INSURANCE CODE];

b. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

§542.003(3) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(c) of the TEXAS INSURANCE CODE];

c. Not attempting in good faith to effect a prompt, fair and equitable settlement of a claim submitted in which liability has become reasonably clear.

§542.003(4) of the TEXAS INSURANCE CODE [formerly 21.21-2, §2(d) of the TEXAS INSURANCE CODE]; and

d. compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder.

§542.003(5) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(e) of the TEXAS INSURANCE CODE].

XIII.

Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall Violations of TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT

Defendants' conduct, acts and omissions as herein before described constitute a violation of this Act, which was the producing cause of damages to Plaintiff. Specifically, Plaintiff alleges that Defendants' conduct violated the TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

(1) the terms of the policy; or,

(2) the benefits or advantages promised by the policy.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

Pleading further, Plaintiff alleges that, in addition to the aforementioned list of violations, the actions of Defendants constituted an "unconscionable action or course of action."

Further, the conduct of Defendants as described in this petition was committed knowingly. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which Plaintiff complains.

XIV. Timing of Claims of Plaintiff

Defendants have already breached the duty of good faith and fair dealing owed to Plaintiff, and has already violated the Texas Insurance Code and Texas Deceptive Trade Practices Act provisions stated above. These breaches occurred at the time that Defendants ignored Plaintiff's claim and failed and/or refused to make a reasonable offer to settle the claim. Accordingly the breaches of the duty of good faith and fair dealing and the above referenced statutes have already occurred and liability for same has already attached. It is anticipated Defendants will soon try to make additional token offers on this case, solely for the purpose of attempting to obtain a severance of the extra-contractual claims. The breaches of the duty of good faith and fair dealing and the violations of the Texas Insurance Code/Insurance Contract/Texas Deceptive Trade Practices Act, however, have already occurred and any further actions are irrelevant in the imposition of liability under these theories, statutes, and contracts. Further, Plaintiff contends that if such token offers are made only to obtain a severance of the

extra-contractual claims, that such offers in and of themselves would be bad faith and a violation of the Texas Insurance Code.

XV.
Damages

Plaintiff alleges that as a direct and proximate result of the conduct, failures, refusals, breaches, negligent acts, and/or omissions of the Defendants, Plaintiff is entitled to recover at least the following damages;

- a. Reasonable and necessary health care expenses incurred in the past;
- b. Reasonable and necessary health care expenses which, in all reasonable probability, will be incurred in the future;
- c. Physical pain and suffering sustained in the past;
- d. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
- e. Mental anguish suffered in the past;
- f. Mental anguish which, in all reasonable probability, will be suffered in the future;
- g. Physical impairment sustained in the past;
- h. Physical impairment which, in all reasonable probability, will be sustained in the future;
- i. Disfigurement which, in all reasonable probability, will be sustained in the future;
- j. Reasonable and necessary attorneys' fees;
- k. Costs of court;
- l. Pre-judgment and Post-judgment interest at the highest legal rate; and,
- m. All other relief to which Plaintiff shows herself to be entitled.

Said damages are of an amount within the Court's jurisdictional limits. The Court has subject matter jurisdiction over the case at bar because Plaintiff believes and alleges that he has

been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court; Plaintiff asks the amount of his verdict and damages be determined by a jury of his peers. Plaintiff asks the jury to award a fair and reasonable amount based on the evidence presented at trial. Plaintiff leaves the amount of that verdict to the discretion of the jury. The Texas Rules of Civil Procedure require Plaintiff to plead that her case falls under a particular category as outlined by the Texas Rules of Civil Procedure. In order to comply with this procedural requirement and to accommodate any potential verdict that could be awarded by a jury. Plaintiff hereby pleads and places his case into the category of suits seeking relief over \$200,000.00 but not more than \$1,000,000.00, including damages, penalties, costs, expenses, and pre-judgment interest. Plaintiff hereby further demands judgment for all relief to which he is entitled.

XVI.
Costs And Interest

It was necessary for Plaintiff to expend monies as the costs of court requisite to prosecute this cause of action. Therefore, an award of these costs to Plaintiff is authorized by:

- a. Rule 131 of the TEXAS RULES OF CIVIL PROCEDURE;
- b. §541.152(a)(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §16(b)(1) of the TEXAS INSURANCE CODE];
- c. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- e. §31.007 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE; and/or,
- f. Equity.

Plaintiff is entitled to pre-judgment interest pursuant to:

- a. §§302.001 and 302.002 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,

c. Equity.

Plaintiff is entitled to post-judgment interest pursuant to:

- a. §§ 304.002 and 304.003 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,
- c. Equity.

XVII.
Attorney's Fees

It was necessary for Plaintiff to hire the attorneys whose names appear below for prosecution of these causes of action. Therefore, an award of reasonable attorneys' fees is authorized by:

- a. §541.152 of the TEXAS INSURANCE CODE [formerly ART. 21.21, §16(b) of the TEXAS INSURANCE CODE];
- b. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- c. §38.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE;
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- e. By written contract by and between the parties; and/or,
- f. Equity.

Said attorney's fees should be taxed against Defendants as costs in this case, where allowed by law. Further, such award is justified to include any appeals to all appellate courts.

XVIII.
Jury Request

Plaintiff respectfully requests the Court to order a trial on the merits by jury. Plaintiff has deposited the jury fee with the clerk of this court and has, in all respects, complied with RULE 216 of the TEXAS RULES OF CIVIL PROCEDURE.

XIX.
Requests For Disclosure

Under the authority of RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests Defendants to disclose, within 50 days of the service of this petition and request, the information or material described in RULE 194.2(a)-(l).

PRAYER

WHEREFORE, Plaintiff prays that the Defendants be cited to appear and answer, and that on final trial, the Honorable Court render judgment in favor of the Plaintiff, to wit:

- a. Damages, actual, special, exemplary and otherwise, not to exceed the policy limits in question;
- b. All Costs of Court;
- c. Both pre-judgment and post-judgment interest at the maximum legal rate;
- d. Reasonable attorney's fees, with conditional sums for the services of Plaintiff's attorney in the event of subsequent appeals; and,
- e. For such other and further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Blvd., Ste. 102
San Antonio, Texas 78216
Telephone No: (210) 444-4444
Facsimile No: (210) 785-0806

BY: 

J. SCOTT MECHLER
State Bar No. 24055952
smechler@jeffdavislawfirm.com

ATTORNEYS FOR PLAINTIFF

PRIVATE PROCESS

"The State of Texas"

NO. 2017CV01542ALBERT F CASTANEDAPlaintiff
vs.

IN THE COUNTY COURT AT

LAW NO. 10TRAVELERS INDEMNITY COMPANY ET AL

Defendant

BEXAR COUNTY, TEXAS

NOTICE

Citation Directed to: LORINA MARSHALL
8711 N FREEPORT PKWY C 3
HOUSTON, TX 77242

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 10TH day of March, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16TH DAY OF March A.D., 2017.

JAMES SCOTT MECHLER

Attorney/PLAINTIFF

address 10500 HERITAGE BLVD 102
SAN ANTONIO, TX 78216

GERARD RICKHOFF

County Clerk of Bexar County, Texas

Bexar County Courthouse

100 Dolorosa Suite 104

San Antonio, Texas 78205

By: JACOBO REYES-MARCHENA Deputy

JACOBO REYES-MARCHENA

3-20-17 Gerry Vidauri

OFFICER'S RETURN

Came to hand day of , A.D. , at o'clock .M.
and executed the day of , A.D. , in
at o'clock .M. by delivering to
in person a true copy of this citation together with the accompanying copy of plaintiff's
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I traveled
\$miles in the execution of this citation. fees:
Mileage Total \$

Serving citation

 County, TexasBy

The State of Texas

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SWORN TO this day of , .2017CV01542
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NOTARY PUBLIC, STATE OF TEXAS

State court action 0031

FILE COPY

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA

vs.

TRAVELERS INDEMNITY COMPANY
AND LORINA MARSHALL§
§
§
§
§
§

IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

2017 APR -6 AM 9:00
BEXAR COUNTYFILED
BEXAR
COUNTYORDER FOR SUBSTITUTE SERVICE

On the Motion presented and the affidavit attached from DAVILA CIVIL PROCESS, A PROCESS SERVER stating the location of the Defendant's usual place of employment or other place where LORINA MARSHALL, the Defendant, can be found and stating specifically the facts showing that service has been attempted under T.R.C.P., RULE 106 (a) (1) will be reasonably effective to give the Defendant notice of this suit by:

- ☒ delivering a true copy of the citation and petition attached, to anyone over 16 years of age at the address specified in the attached affidavit of the diligence.
- ☐ attaching a true copy of the citation and petition securely to the front door at the address specified in the attached affidavit of due diligence
- ☐ serving a true copy of the citation and petition to the TEXAS SECRETARY OF STATE
- ☐ publication in the newspapers

It is further ordered that the agent of DAVILA CIVIL PROCESS, A CIVIL PROCESS SERVER to make due return in accordance with the T.R.C.P., RULE 107.

SIGNED THIS 6 DAY OF April, 2017.

PRESIDING JUDGE

Y0101461P605651

PRIVATE PROCESS

"The State of Texas"

NO. 2017CV01542ALBERT F CASTANEDAPlaintiff
vs.

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Defendant

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Attorney/PLAINTIFF
address 10500 HERITAGE BLVD 102
SAN ANTONIO, TX 78216



GERARD RICKHOFF
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100 Dolorosa Suite 104
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By: [Signature] Deputy
JACOBO REYES-MARCHENA

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2017CV01542
(DKC001)

NOTARY PUBLIC, STATE OF TEXAS

State court case 0033

E-FILED
 Bexar County, County Clerk
 Gerard Rickhoff
 Accepted Date: 3/13/2017 9:36:05 AM
 Accepted By: Allison Humes/s/
 /s/ Allison Humes
 Deputy Clerk

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA	§	IN THE COUNTY COURT
	§	
V.	§	AT LAW NO. <u>CC# 10</u>
	§	
TRAVELERS INDEMNITY COMPANY; AND LORINA MARSHALL	§	BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION WITH REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

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II.

Parties

Plaintiff, ALBERT F. CASTANEDA, is an individual whose address is 3131 Jane Ellen Street, San Antonio, Texas 78237, and will hereinafter be referred to as "PLAINTIFF." The last three numbers of Albert F. Castaneda's social security number are 513.

Defendant, TRAVELERS INDEMNITY COMPANY (hereinafter "Travelers" or collectively "Defendants"), is a corporation chartered by The State of Texas and licensed by the Texas Department of Insurance. Defendant TRAVELERS INDEMNITY COMPANY may be served with process upon its registered agent for service at: Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218. Service of process is requested by private process as authorized by this Court.

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Defendant Travelers indemnity Company and is a resident of the state of Texas. This Defendant may be served with process at the following address: 8711 N. Freeport Pkwy., C 3, Houston, Texas 77242-2927, or wherever she may be found. Service of process is requested by private process as authorized by this Court.

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V.
Jurisdiction

In Personam: The Court has *in personam* jurisdiction over Travelers Indemnity Company because Defendant is chartered by The State of Texas and is therefore a resident of The State of Texas; and/or Defendant is a domestic corporation licensed in and by The State of Texas and have a principal office within The State of Texas; and/or because Defendant purposefully availed itself of the privilege of conducting activities within The State of Texas; and/or because Defendant purposefully established more than minimum contacts with The State of Texas by conducting and/or doing business within The State of Texas.

Subject Matter: The Court has subject matter jurisdiction over the case at bar because the Plaintiff believes and alleges that she has been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court.

VI.
Standing

On November 6, 2015, Plaintiff was driving a company vehicle owed and maintained by Maruti Transit Group. As Plaintiff was traveling southbound on IH-35 in San Antonio, Texas, he was struck by Christopher Arguijo (a non-party to this suit). As a result of the negligence of under-insured motorist Christopher Arguijo (a non-party to this suit), Plaintiff sustained bodily injuries.

At such time there existed a contract in the form of a policy of insurance by and between Defendant Travelers Indemnity Company, as insurer for Maruti Transit Group. This policy covered losses attributable to the ownership, maintenance or use of a vehicle by an uninsured/underinsured motorist. Defendants' failure to perform under the policy of insurance contract, and pursuant to applicable law, creates standing for Plaintiff to bring this instant cause of actions. The factual allegations below establish that Plaintiff has a cause of action against under-insured motorist Christopher Arguijo (a non-party to this suit) and thus by consequence has a cause of action against the Defendants herein.

VII.
Conditions Precedent

Plaintiff asserts that all conditions precedent to the bringing of this cause of action have been performed or have occurred prior to the filing of the cause of action at bar. Alternatively, to the extent any conditions have not been met, failure to meet said conditions, if any, has not prejudiced Defendants.

VIII.
Factual Allegations

On November 6, 2015, Plaintiff was lawfully operating his motor vehicle and was traveling southbound on IH-35 in San Antonio, Bexar County, Texas. As Plaintiff was traveling on IH-35 he had to come to stop due to traffic ahead of him. Christopher Arguijo (a non-party to this suit) was also driving his vehicle on IH-35 behind Plaintiff's vehicle, when suddenly and without warning Christopher Arguijo failed to control his vehicle and rear-ended Plaintiff's vehicle. By failing to stop Christopher Arguijo failed to yield the way of right to Plaintiff and negligently collided into Plaintiff's vehicle. The collision was caused by the negligence of Christopher Arguijo. As a result of the negligence of under-insured motorist Christopher Arguijo, Plaintiff sustained bodily injuries. Plaintiff was caused to suffer serious and permanent injuries and damages, which far exceeded the amount of the liability insurance available. Plaintiff settled a claim for liability coverage and payment with Christopher Arguijo's insurance company. Mr. Arguijo's carrier carried liability limits of only \$30,000.00 and tendered \$30,000.00 to settle this claim with Plaintiff.

Plaintiff also timely filed a claim for underinsured motorist coverage with Defendant Travelers. Unfortunately, claims representative Lorina Marshall was assigned to Plaintiff's claim. Lorina Marshall on behalf and while in the course and scope of her employment with Travelers was responsible for the evaluation and handling of the underinsured motorist claims.

Permission to settle the liability claim as well as a request for the underinsured motorist coverage was sent to Travelers on February 5, 2016. Plaintiff's medical bills far exceed the amount of the minimum policy that was tendered and the amounts offered by Progressive Insurance. Plaintiff's demand letter detailed not only the care that he had as a result of the wreck but also the care that has been recommended for the future. Plaintiff has attempted to get Travelers Indemnity Company to place additional money toward the claim under the contract of

the underinsured motorist coverage and act according to its terms and according to governing law with respect to the Plaintiff. Defendants have ultimately failed to meet this responsibility. Defendants have failed and refused, and still fail and refuse to perform and pay the Plaintiff for the benefits to which he is entitled under the terms of the contract outlining the policy provisions between the Plaintiff and Travelers.

Lorina Marshall acting on behalf of Travelers has refused to consider the medical bills over the amount of the policy limits that were tendered and have refused to consider the additional medical treatment that has been recommended and documented for the Plaintiff. Lorina Marshall was acting as the agent for Travelers and within the course and scope of her employment with Travelers. This adjuster's conduct can only be characterized as incompetent and intentional. Either way, the actions of Lorina Marshall while in the course and scope of her employment for Travelers was ratified by the company.

IX.

Breach of Contract - Defendant Travelers Indemnity Company

Defendant Travelers Indemnity Company is liable for breach of the underinsured motorist provision of the policy contract. Travelers Indemnity Company has a legal obligation to pay insurance benefits that fairly compensate Plaintiff, but despite various demands, has failed and/or refused to do so. Traveler Indemnity Company has been given all items necessary to evaluate this claim. Such failure(s) and/or refusal(s) constitute a breach of its contract and said breach has directly resulted in damages to Plaintiff.

X

Cause of Action – Defendant Travelers Indemnity Company
Breach of the Common Law Duty of Good Faith and Fair Dealing

Defendant Travelers Indemnity Company breached its duty of good faith and fair dealing in relation to Plaintiff's claim by failing and/or refusing to settle this matter for the amount of money necessary to properly compensate Plaintiff for his damages, despite ample evidence that

the worth of the claim exceeded all applicable insurance coverages and ample opportunity to settle. In addition, Defendant has failed to attempt to effectuate a proper settlement in good faith after liability had become reasonably clear. Said breach was a proximate cause of damages to Plaintiff.

XI.

**Cause of Action- Defendants Travelers Indemnity Company and Lorina Marshall
Violations of Chapter 541 of the TEXAS INSURANCE CODE
[formerly ART. 21.21 of the TEXAS INSURANCE CODE]**

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Travelers Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

(1) the terms of the policy; or,

(2) the benefits or advantages promised by the policy.

§541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. ~~Failing to attempt in good faith to effectuate a prompt, fair, and equitable~~
settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder;

§541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

XII.

**Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall
Violations of Chapter 542, Subchapter B, of the TEXAS INSURANCE CODE
[formerly ART. 21.21-2 and 21.55 of the TEXAS INSURANCE CODE]**

At all times during the handling of Plaintiff's claim, Lorina Marshall was an employee of Allstate Insurance Company engaged in the business of insurance, who had the responsibility for the servicing of insurance policies, with special expertise in the evaluation and adjusting of insurance claims. Ms. Marshall is a person under the Texas Insurance Code.

Defendants' conduct, acts and omissions as herein described constitute violations of said Chapter, violations that were the producing cause of damages to Plaintiff, as follows:

a. Failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy.

§542.003(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(b) of the TEXAS INSURANCE CODE];

b. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

§542.003(3) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(c) of the TEXAS INSURANCE CODE];

c. Not attempting in good faith to effect a prompt, fair and equitable settlement of a claim submitted in which liability has become reasonably clear.

§542.003(4) of the TEXAS INSURANCE CODE [formerly 21.21-2, §2(d) of the TEXAS INSURANCE CODE]; and

d. compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder.

§542.003(5) of the TEXAS INSURANCE CODE [formerly ART. 21.21-2, §2(e) of the TEXAS INSURANCE CODE].

XIII.

**Cause of Action - Defendants Travelers Indemnity Company and Lorina Marshall
Violations of TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT**

Defendants' conduct, acts and omissions as herein before described constitute a violation of this Act, which was the producing cause of damages to Plaintiff. Specifically, Plaintiff alleges that Defendants' conduct violated the TEXAS DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, as follows:

a. Making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

- (1) the terms of the policy; or,
- (2) the benefits or advantages promised by the policy.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.051(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(1) of the TEXAS INSURANCE CODE];

b. Failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(2) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(ii) of the TEXAS INSURANCE CODE]; and

c. Failing within a reasonable time to affirm or deny coverage of a claim to a policyholder.

§17.50(a)(4) of the TEXAS BUSINESS AND COMMERCE CODE, by and through §541.060(a)(4)(A) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §4(10)(v)(A) of the TEXAS INSURANCE CODE].

Pleading further, Plaintiff alleges that, in addition to the aforementioned list of violations, the actions of Defendants constituted an "unconscionable action or course of action."

Further, the conduct of Defendants as described in this petition was committed knowingly. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which Plaintiff complains.

XIV.

Timing of Claims of Plaintiff

Defendants have already breached the duty of good faith and fair dealing owed to Plaintiff, and has already violated the Texas Insurance Code and Texas Deceptive Trade Practices Act provisions stated above. These breaches occurred at the time that Defendants ignored Plaintiff's claim and failed and/or refused to make a reasonable offer to settle the claim. Accordingly the breaches of the duty of good faith and fair dealing and the above referenced statutes have already occurred and liability for same has already attached. It is anticipated Defendants will soon try to make additional token offers on this case, solely for the purpose of attempting to obtain a severance of the extra-contractual claims. The breaches of the duty of good faith and fair dealing and the violations of the Texas Insurance Code/Insurance

Contract/Texas Deceptive Trade Practices Act, however, have already occurred and any further actions are irrelevant in the imposition of liability under these theories, statutes, and contracts. Further, Plaintiff contends that if such token offers are made only to obtain a severance of the

extra-contractual claims, that such offers in and of themselves would be bad faith and a violation of the Texas Insurance Code.

XV.

Damages

Plaintiff alleges that as a direct and proximate result of the conduct, failures, refusals, breaches, negligent acts, and/or omissions of the Defendants, Plaintiff is entitled to recover at least the following damages:

- a. Reasonable and necessary health care expenses incurred in the past;
 - b. Reasonable and necessary health care expenses which, in all reasonable probability, will be incurred in the future;
 - c. Physical pain and suffering sustained in the past;
 - d. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
 - e. Mental anguish suffered in the past;
 - f. Mental anguish which, in all reasonable probability, will be suffered in the future;
 - g. Physical impairment sustained in the past;
 - h. Physical impairment which, in all reasonable probability, will be sustained in the future;
 - i. Disfigurement which, in all reasonable probability, will be sustained in the future;
 - j. Reasonable and necessary attorneys' fees;
 - k. Costs of court;
-
- l. Pre-judgment and Post-judgment interest at the highest legal rate; and,
 - m. All other relief to which Plaintiff shows herself to be entitled.

Said damages are of an amount within the Court's jurisdictional limits. The Court has subject matter jurisdiction over the case at bar because Plaintiff believes and alleges that he has

been injured and that the resulting damages are of an amount within the jurisdictional limits of the Court; Plaintiff asks the amount of his verdict and damages be determined by a jury of his peers. Plaintiff asks the jury to award a fair and reasonable amount based on the evidence presented at trial. Plaintiff leaves the amount of that verdict to the discretion of the jury. The Texas Rules of Civil Procedure require Plaintiff to plead that her case falls under a particular category as outlined by the Texas Rules of Civil Procedure. In order to comply with this procedural requirement and to accommodate any potential verdict that could be awarded by a jury. Plaintiff hereby pleads and places his case into the category of suits seeking relief over \$200,000.00 but not more than \$1,000,000.00, including damages, penalties, costs, expenses, and pre-judgment interest. Plaintiff hereby further demands judgment for all relief to which he is entitled.

XVI.
Costs And Interest

It was necessary for Plaintiff to expend monies as the costs of court requisite to prosecute this cause of action. Therefore, an award of these costs to Plaintiff is authorized by:

- a. Rule 131 of the TEXAS RULES OF CIVIL PROCEDURE;
- b. §541.152(a)(1) of the TEXAS INSURANCE CODE [formerly ART. 21.21, §16(b)(1) of the TEXAS INSURANCE CODE];
- c. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- ~~e. §31.007 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE; and/or,~~
- f. Equity.

Plaintiff is entitled to pre-judgment interest pursuant to:

- a. §§302.001 and 302.002 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,

c. Equity.

Plaintiff is entitled to post-judgment interest pursuant to:

- a. §§ 304.002 and 304.003 of the TEXAS FINANCE CODE;
- b. Contract by and between the parties; and/or,
- c. Equity.

XVII.
Attorney's Fees

It was necessary for Plaintiff to hire the attorneys whose names appear below for prosecution of these causes of action. Therefore, an award of reasonable attorneys' fees is authorized by:

- a. §541.152 of the TEXAS INSURANCE CODE [formerly ART. 21.2], §16(b) of the TEXAS INSURANCE CODE];
- b. §542.060 of the TEXAS INSURANCE CODE [formerly ART. 21.55, §6 of the TEXAS INSURANCE CODE];
- c. §38.001 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE;
- d. §17.50(d) of the TEXAS BUSINESS AND COMMERCE CODE;
- e. By written contract by and between the parties; and/or,
- f. Equity.

Said attorney's fees should be taxed against Defendants as costs in this case, where allowed by law. Further, such award is justified to include any appeals to all appellate courts.

XVIII.
Jury Request

Plaintiff respectfully requests the Court to order a trial on the merits by jury. Plaintiff has deposited the jury fee with the clerk of this court and has, in all respects, complied with RULE 216 of the TEXAS RULES OF CIVIL PROCEDURE.

XIX.
Requests For Disclosure

Under the authority of RULE 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests Defendants to disclose, within 50 days of the service of this petition and request, the information or material described in RULE 194.2(a)-(1).

PRAYER

WHEREFORE, Plaintiff prays that the Defendants be cited to appear and answer, and that on final trial, the Honorable Court render judgment in favor of the Plaintiff, to wit:

- a. Damages, actual, special, exemplary and otherwise, not to exceed the policy limits in question;
- b. All Costs of Court;
- c. Both pre-judgment and post-judgment interest at the maximum legal rate;
- d. Reasonable attorney's fees, with conditional sums for the services of Plaintiff's attorney in the event of subsequent appeals; and
- e. For such other and further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Blvd., Ste. 102
San Antonio, Texas 78216
Telephone No: (210) 444-4444
Facsimile No: (210) 785-0806

BY: 

J. SCOTT MECHLER
State Bar No. 24055952
smechler@jeffdavislawfirm.com

ATTORNEYS FOR PLAINTIFF

LCM
JCH/2076
4/13/17
@ 3:42p

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA

vs.

TRAVELERS INDEMNITY COMPANY
AND LORINA MARSHALL

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IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

2017 APR -6 AM 9:00

FILED
CLERK
COURT

[Signature]

ORDER FOR SUBSTITUTE SERVICE

On the Motion presented and the affidavit attached from DAVILA CIVIL PROCESS,
A PROCESS SERVER stating the location of the Defendant's usual place of employment or other
place where LORINA MARSHALL, the Defendant, can be found and stating specifically the facts
showing that service has been attempted under T.R.C.P., RULE 106 (a) (1) will be reasonably
effective to give the Defendant notice of this suit by:

- ☒ delivering a true copy of the citation and petition attached, to anyone over 16 years of age at
the address specified in the attached affidavit of the diligence.
- ☐ attaching a true copy of the citation and petition securely to the front door at the address
specified in the attached affidavit of due diligence
- ☐ serving a true copy of the citation and petition to the TEXAS SECRETARY OF STATE
- ☐ publication in the newspapers

It is further ordered that the agent of DAVILA CIVIL PROCESS, A CIVIL PROCESS
SERVER to make due return in accordance with the T.R.C.P., RULE 107.

SIGNED THIS 6 DAY OF April, 2017.

[Signature]
PRESIDING JUDGE

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA

vs.

TRAVELERS INDEMNITY COMPANY
AND LORINA MARSHALL

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IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

2017 APR -6 AM 9:01

MOTION FOR SUBSTITUTE OF SERVICE
TRCP 106 (b)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ALBERT F. CASTANEDA, Plaintiff in the above-numbered and entitled cause and would show and brings this Motion for Substitute of Service, under the T.R.C.P. Rule 106 (b), and in support hereof, shows the court the following:

I.

The Original Citation and Petition on the named Defendant: LORINA MARSHALL has not been delivered because the agent of DAVILA CIVIL PROCESS, a civil process server has been unable to locate the Defendant at her usual place of employment, as set forth in the affidavit and attachments hereto and made part of this motion for all purpose.

WHEREFORE, Plaintiff prays that service of process on the Defendant be authorized by:

 X delivering a true copy of the citation and petition attached, to anyone over 16 years of age at the address specified in the attached affidavit of the diligence.

 attaching a true copy of the citation and petition securely to the front door at the address specified in the attached affidavit of due diligence

 serving a true copy of the citation and petition to the TEXAS SECRETARY OF STATE


 publication in the newspapers

Which Plaintiff believes to be reasonable effective to give the Defendant notice of the suit.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Albert F. Castaneda, prays that the Court enter an order granting this motion and allowing substitution of service on the Defendant Lorina Marshall, and for such other and further relief, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Blvd., Ste. 102
San Antonio, Texas 78216
Telephone No.: (210) 444-4444
Facsimile No.: (210) 870-1561

By: 
J. Scott Mechler
State Bar No. 24055952
Email: smechler@jeffdavislawfirm.com

ATTORNEYS FOR PLAINTIFF

Cause No. 2017CV01542**ALBERT F. CASTANEDA,**
Plaintiff**vs.****TRAVELERS INDEMNITY**
COMPANY, ET AL.
Defendant**IN THE COUNTY COURT****AT LAW NO. 10****BEXAR COUNTY, TEXAS****AFFIDAVIT IN SUPPORT OF**
MOTION FOR SUBSTITUTED SERVICE

In support of Plaintiff's attached motion for an order authorizing service of, citation herein, as prescribed by Rule 106 of the Texas Rules of Civil Procedure, the undersigned, being duly sworn, states as follows:

I.

Citation for Lorina Marshall, in the above styled and numbered case, was delivered to the undersigned Affiant a duly qualified civil process server authorized to serve citations in Harris County, Texas pursuant to Rule 103 of the Texas Rules of Civil Procedure and Supreme Court of Texas Order. I am not a party to or interested in the outcome of this suit. I am not an employee of the attorney or his firm in this case. I am not a spouse of any of the parties to this case, or a spouse of any member of the attorney's firm in this case. I am not an employee of a party to this case. I also do not expect to be called as a witness in this case.

II.

Defendant's place of employment is believed to be at 4650 Westway Park Blvd., Houston, Texas 77041.

III.

I attempted to make personal service on the Defendant, Lorina Marshall, on the following occasions:

DATE	TIME	ADDRESS	COMMENT
03/25/17		8711 N. Freeport Pkwy C3, Houston, Texas 77042	This address was found to be invalid.
03/28/17	3:18 PM	4650 Westway Park Blvd., Houston, Texas 77041	I attempted service and spoke with Irma, the receptionist, in suite 350 (for visitors), who said that Lorina was in a meeting and unavailable. I left a notification card with her to give to Ms. Marshall.
03/29/17	1:40 PM	4650 Westway Park Blvd., Houston, Texas 77041	I attempted service and spoke with Irma who said that Lorina was working from home today and she didn't know when she will be back. Left another notification card with her.

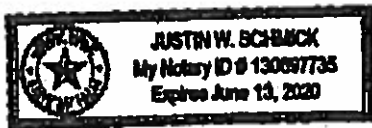
IV.


For the reasons set forth above, it is impractical to secure personal service on Defendant, Lorina Marshall, and I will be unable to do so despite due diligence. Therefore, substituted service is necessary and I believe Lorina Marshall will receive effective notice of this suit by leaving copies of the citation and the attached petition with anyone over the age of sixteen (16) years at 4650 Westway Park Blvd., Houston, Texas 77041 or by attaching the citation with the petition attached, to either the front door, side door, back door, gate and/or fence of the residence and/or business located at 4650 Westway Park Blvd., Houston, Texas 77041.

V.
I have personal knowledge of the facts stated above, and they are true and correct.


Lisa G. Moberg, SCH #12076, Exp. 06/30/2019

SIGNED AND SWORN TO before me on April 1, 2017.




Notary Public, State of Texas

2017CV01542**CAUSE NO. 2017CV01542**

E-FILED
 Bexar County, County Clerk
 Gerard Rickhoff
 Accepted Date 4/11/2017 3 53 05 PM
 Accepted By: Justin Longoria
/s/ Justin Longoria
 Deputy Clerk

ALBERT F. CASTANEDA
Plaintiff

vs.

TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL
Defendants

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IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

DEFENDANT THE TRAVELERS INDEMNITY COMPANY'S
ORIGINAL ANSWER

COMES NOW Defendant **THE TRAVELERS INDEMNITY COMPANY** (incorrectly identified as "Travelers Indemnity Company" in Plaintiff's Original Petition) ("Defendant" or "Travelers" hereafter), and files its Original Answer, and in support thereof would show as follows:

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendant denies each and every, all and singular, the material allegations contained in Plaintiff's pleadings filed herein, and demands strict proof thereof, as required by the laws of this State of persons or entities who bring suit as the Plaintiff did in the instant case.

2. To the extent Plaintiff seeks recovery for medical bills, expenses, and services that were provided to Plaintiff, but which were never charged to Plaintiff or were charged to Plaintiff but thereafter written off with no expectation of payment, and therefore never paid or incurred by Plaintiff, Defendant contends that Plaintiff is not entitled to recover these amounts. Defendant is entitled to a credit for any offset or discount from fees for services; specifically, Plaintiff may only recover medical or healthcare expenses that the patient actually paid or that were incurred by or on the patient's behalf. TEX. CIV. PRAC. & REM. CODE § 41.0105.

3. Defendant further pleads that pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE §18.091, and notwithstanding any other law, that if Plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of pecuniary value, or loss of inheritance, then Plaintiff is required to present evidence to prove such losses in the form of a net loss after reduction for income tax purposes or unpaid tax liability pursuant to federal income tax laws.

4. Defendant denies by verification under Rule 93(15) of the TEXAS RULES OF CIVIL PROCEDURE, the allegations on page 3 of Plaintiff's Original Petition contained within paragraph VII., titled "Conditions Precedent", that "all conditions precedent to the bringing of this cause of action have been performed or have occurred prior to the filing of the cause of action at bar." Plaintiff has failed to establish that he is legally entitled to recover damages from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by him, caused by the accident with an underinsured motor vehicle -- all as required by the Texas Uninsured/Underinsured Motorists Coverage endorsement of the policy and Texas underinsured/uninsured motorist case law. Further, Plaintiff has not established a contractual duty to pay, giving rise to a breach of contract claim under the alleged automobile policy. Also, Plaintiff has not established proper presentment of his claim for attorney's fees as required by Texas law.

5. Defendant would show that it is entitled to all credits and offsets allowed under the policy against any damages awarded by the jury. Such credits and offsets include, but are not limited to, all Personal Injury Protection (PIP) payments previously made by Travelers to Plaintiff Albert F. Castaneda in the total amount of \$2,500.00. Defendant is also entitled to an offset in the amount of \$30,000.00 recovered from the alleged underinsured tortfeasor Christopher Arguijo's liability insurer and any amount recovered from any other person, firm or

entity responsible for the injuries and damages to Plaintiff. If there is any combination of benefits payable to Plaintiff from the alleged underinsured tortfeasor or other responsible party or parties, whether paid by the tortfeasor or the responsible party or parties or paid on their behalf because of Plaintiff's damages, said payments should be offset against Plaintiff's damages, which would affect Plaintiff's recovery from Defendant. Defendant asserts its right to all legal and/or contractual offsets and/or credits to which it may be entitled.

6. Plaintiff's claim is barred because the damages, if any, about which Plaintiff complains are solely caused by preexisting conditions, independent and not aggravated by the incident made the basis of this suit, and/or they are caused by a subsequent injury. Pre-existing conditions include but are not limited to: chronic eye pain from surgery prior to the incident made the basis of this suit, abdominal and chest pain suffered by Plaintiff prior to the incident made the basis of this suit and knee and spine conditions which pre-existed the incident made the basis of this suit – all as reported or reflected in Plaintiff's medical records provided to Defendant. Defendant states that if Plaintiff is suffering from any injury, impairment, incapacity or disability whatsoever, such condition is solely due to some disease, natural cause, prior injury, or subsequent injury, wholly disassociated from the alleged injuries forming the basis of this lawsuit. Therefore, the incident made the basis of this lawsuit cannot be the proximate cause of the injury or damages.

7. Defendant asserts that Plaintiff is not entitled to pre-judgment interest or any other damages, if any, beyond the benefits provided under the uninsured/underinsured motorist coverage of the subject insurance contract.

8. Defendant respectfully reserves the right at this time to amend this answer to the

Plaintiff's allegations after said Defendant has had the opportunity to more closely investigate these claims, as is the right and privilege of said Defendant under the TEXAS RULES of Civil Procedure and the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant THE TRAVELERS INDEMNITY COMPANY having fully answered herein, prays that the Court enter a take-nothing judgment in its favor, and for such other and further relief, both special and general, to which it may be justly entitled.

Respectfully submitted,

LECLAIR RYAN

/s/ Bruce C. Gaible

By:

BRUCE C. GAIBLE
State Bar No. 07567400
1233 West Loop South, Suite 1000
Houston, TX 77027
Telephone : (713) 654-1111
Facsimile : (713) 650-0027
Email : bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANT,
THE TRAVELERS INDEMNITY COMPANY**

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record on this the 10th day of April, 2017.

J. Scott Mechler
Davis Law Firm
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216

*Via E-Serve &
Facsimile 210-785-0806*

/s/ Bruce C. Gaible

BRUCE C. GAIBLE

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA
Plaintiff

vs.

TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL
Defendants

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IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

VERIFICATION

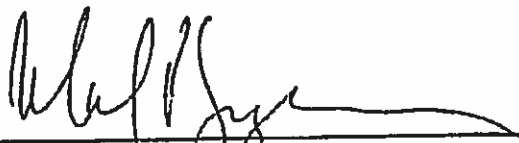
STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Bruce C. Gaible, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the counsel of record for Defendant The Travelers Indemnity Company in the above-captioned and styled lawsuit, and that the statements contained in paragraph 4. of Defendant's Original Answer are true and correct based upon information and belief.

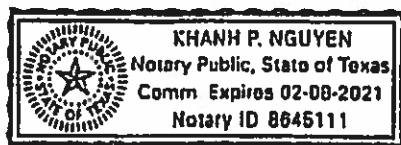


BRUCE C. GAIBLE

SUBSCRIBED AND SWORN to before me on this 10th day of April, 2017 to certify which witness my hand and official seal of office.



NOTARY PUBLIC
STATE OF TEXAS



2017CV01542

CAUSE NO. 2017CV01542

E-FILED
Bexar County, County Clerk
Gerard Rickhoff
Accepted Date: 4/20/2017 2:11:32 PM
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/s/ Justin Longoria
Deputy Clerk

ALBERT F. CASTANEDA
Plaintiff

vs.

TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL
Defendants

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IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

DEFENDANT LORINA MARSHALL'S
ORIGINAL ANSWER

COMES NOW Defendant LORINA MARSHALL ("Defendant") and files her Original Answer, and in support thereof would show as follows:

1. Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendant denies each and every, all and singular, the material allegations contained in Plaintiff's pleadings filed herein, and demands strict proof thereof, as required by the laws of this State of persons or entities who bring suit as the Plaintiff did in the instant case.

2. To the extent Plaintiff seeks recovery for medical bills, expenses, and services that were provided to Plaintiff, but which were never charged to Plaintiff or were charged to Plaintiff but thereafter written off with no expectation of payment, and therefore never paid or incurred by Plaintiff, Defendant contends that Plaintiff is not entitled to recover these amounts. Defendant is entitled to a credit for any offset or discount from fees for services; specifically, Plaintiff may only recover medical or healthcare expenses that the patient actually paid or that were incurred by or on the patient's behalf. TEX. CIV. PRAC. & REM. CODE § 41.0105.

3. Defendant further pleads that pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE §18.091, and notwithstanding any other law, if Plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of pecuniary value, or loss of inheritance,

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then Plaintiff is required to present evidence to prove such losses in the form of a net loss after reduction for income tax purposes or unpaid tax liability pursuant to federal income tax laws.

4. Defendant denies by verification under Rule 93(15) of the TEXAS RULES OF CIVIL PROCEDURE, the allegations on page 3 of Plaintiff's Original Petition contained within paragraph VII., titled "Conditions Precedent", that "all conditions precedent to the bringing of this cause of action have been performed or have occurred prior to the filing of the cause of action at bar." Plaintiff has not pled that he has a contract for underinsured benefits with Lorina Marshall. Further, Plaintiff has failed to establish that he is legally entitled to recover damages from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by him, caused by the accident with an underinsured motor vehicle -- all as required by the Texas Uninsured/Underinsured Motorists Coverage endorsement of the policy referenced by Plaintiff and the case law addressing conditions precedent for Texas underinsured/uninsured motorist recovery. Further, Plaintiff has not established a contractual duty to pay, giving rise to a breach of contract claim under a policy of insurance allegedly issued by Co-Defendant Travelers. *See Henson v. Tex. Farm Bureau Mut. Ins. Co.*, 989 S.W.2d 837, 839 (Tex.App.Amarillo 1999), *aff'd*, 17 S.W.3d 652 (Tex. 2000). ("To avail himself of the uninsured/underinsured coverage, Henson was required by the precise language of the policies to show that he was 'legally entitled to recover' from either [of two alleged tortfeasors], or both ... Henson must be able to show fault on the part of the uninsured or underinsured motorist and the extent of his resulting damages.") Also, because Plaintiff has no breach of contract claim, Plaintiff can establish no proper presentment of his claim for attorney's fees as required by Texas law. And, Plaintiff has no claim for recovery of attorney's fees against Defendant Lorina Marshall because no contract exists between the two.

5. Defendant would show that in the unlikely event judgment is entered against her, she is entitled to all credits and offsets allowed under the policy against any damages, if any, awarded by the jury. Such credits and offsets include, but are not limited to, all Personal Injury Protection (PIP) payments previously made by Defendant The Travelers Indemnity Company to Plaintiff Albert F. Castaneda in the total amount of \$2,500.00. Defendant is also entitled to an offset in the amount of \$30,000.00 recovered from the alleged underinsured tortfeasor Christopher Arguijo's liability insurer and any amount recovered from any other person, firm or entity responsible for the injuries and damages to Plaintiff. If there is any combination of benefits payable to Plaintiff from the alleged underinsured tortfeasor or other responsible party or parties, whether paid by the tortfeasor or the responsible party or parties or paid on their behalf because of Plaintiff's damages, said payments should be offset against Plaintiff's damages, if any, which would affect Plaintiff's recovery from Defendant, if any. Defendant asserts its right to all legal and/or contractual offsets and/or credits to which she may be entitled.

6. Plaintiff's claim is barred because the damages, if any, about which Plaintiff complains are solely caused by pre-existing conditions, independent and not aggravated by the incident made the basis of this suit, and/or they are caused by a subsequent injury. Plaintiff's pre-existing conditions include but are not limited to: chronic eye pain from surgery prior to the incident made the basis of this suit, abdominal and chest pain suffered by Plaintiff prior to the incident made the basis of this suit and knee and spine conditions which pre-existed the incident made the basis of this suit – all as reported or reflected in Plaintiff's medical records provided to The Travelers Indemnity Company. Defendant states that if Plaintiff is suffering from any injury, impairment, incapacity or disability whatsoever, such condition is solely due to some disease, natural cause, prior injury, or subsequent injury, wholly disassociated from the alleged

injuries forming the basis of this lawsuit. Therefore, the incident made the basis of this lawsuit cannot be the proximate cause of the injury or damages.

7. Defendant asserts that Plaintiff is not entitled to pre-judgment interest or any other damages, if any and in the unlikely event judgment is entered against her, beyond the benefits provided under the uninsured/underinsured motorist coverage of the subject insurance contract.

8. Defendant Lorina Marshall further asserts that Plaintiff has not pled a breach of contract claim or cause of action for breach of the duty of good faith and fair dealing against Defendant Lorina Marshall in this suit for recovery of contractual underinsured motorist ("UIM") benefits. Because Plaintiff has no basis for recovery against her, contractual or extra-contractual, she is entitled to dismissal from this lawsuit. Plaintiff has no cause of action for breach of contract against Lorina Marshall, and, under Texas UIM case law, *all* of Plaintiff's claims extra-contractual claims against Lorina Marshall are predicated on a contractual failure to pay UIM contractual benefits. In fact, there exists no contract between Plaintiff and Lorina Marshall, and therefore Plaintiff has no cause of action for contractual benefits *and* no common law or statutory extra-contractual causes of action for damages exist against Lorina Marshall. See *In re Old Am. Cnty. Fire Ins. Co.*, 2013 WL 398866, at *4 (Tex. App.—Corpus Christi Jan. 30, 2013, orig. proceeding) (mem. op.) ("to prevail on their extra-contractual claims against Old American, plaintiffs must first demonstrate that Old American was contractually obligated to pay their uninsured motorist claim"); *In re United Fire Lloyds*, 327 S.W.3d 250, 257 (Tex. App.—San Antonio 2010, orig. proceeding) ("United Fire should not be required to put forth the effort and expense of conducting discovery, preparing for a trial, and conducting voir dire on bad faith claims that could be rendered moot by the portion of the trial relating to UIM benefits.") The policy of insurance upon which Plaintiff sues was not a contract entered into with the individual

Defendant Lorina Marshall. *See Aetna Cas. & Sur. Co. v. Garza*, 906 S.W.2d 543, 551-552 (Tex. App. – San Antonio 1995, writ dismissed by agreement)(trial court erred in rendering judgment against adjuster individually; “[a]n insurance company cannot delegate the duty of good faith and fair dealing because *it has the contract with the insured*.”). *See also Natividad v. Alexis, Inc.*, 875 S.W.2d 692, 697-98 (Tex. 1994)(“[t]here is no need to extend the duty of good faith and fair dealing owed by insurance carriers to their insureds to include agents or contractors of the insurance carrier” because “absent privity of contract, the duty [of good faith and fair dealing] does not arise”).

9. Defendant further asserts that Defendant Lorina Marshall is entitled to dismissal of all of Plaintiff’s extra-contractual claims pled against her for failure to pay UIM contractual benefits, whether extra-contractual claims are grounded in the common law of breach of the duty of good faith and fair dealing or in statute. Therefore, *all* statutory extra-contractual claims fail. *See Borg v. Metro. Lloyd’s of Texas*, W:12-CV-256, 2013 WL 12091651, at *3 (W.D. Tex. Feb. 21, 2013) (citing with approval *Weir v. Twin City Fire Insurance Company*, 622 F. Supp. 2d 483, 486 (S.D. Tex. 2009) and agreeing that, in general “[i]f there is no contractual duty to pay, [Defendant] cannot be in ‘bad faith,’ under common law or statute.”) *See also Robinson v. State Farm & Cas. Co.*, 13 F.3d 160, 162 (5th Cir. 1994)(“Texas Insurance Code and the Deceptive Trade Practices Act are in large measure statutory fleshings-out of the already existing, common law requirements.”); *Higginbotham v. State Farm Mut. Auto. Ins. Co.*, 103 F.3d 456, 460 (5th Cir. 1997)(“Texas courts have clearly ruled that these [DTPA and Insurance Code] extra-contractual tort claims require the same predicate for recovery as bad faith causes of action in Texas.”)

10. Defendant Lorina Marshall further asserts, specifically, that she is entitled to dismissal of Plaintiff's cause of action for violations of Chapter 541 of the Texas Insurance Code (formerly Art. 21.21 – as noted in Plaintiff's petition). Plaintiff alleges that Defendant Lorina Marshall was employed by Travelers, an insurance company, and was acting as the agent for Travelers and within the course and scope of her employment with Travelers. However, Plaintiff pleads no facts that Lorina Marshall was herself "engaged in the business of insurance" such that liability separate and apart from that of her employer Travelers could be assessed. *See Borg v. Met. Lloyd's of Tex.*, C.A. No. W:12-CV-256, 2012 WL 12539326, at *4 (W.D. Tex., Nov. 26, 2012) (finding that because 1) Plaintiff had not pled that he was "legally entitled to recover" against Defendants by establishing existence of a judgment that the uninsured motorist was at fault and the extent of damages and 2) Plaintiff had not alleged any facts which reasonably demonstrated he had any independent claim against the adjuster, Plaintiff failed to state a viable claim against the improperly joined individual adjuster.) *See also Liberty Mut. Ins. Co. v. Garrison Contrs.*, 966 S.W.2d 4821(Tex. 1998)(finding that a sales agent may be individually liable when the agent misrepresents specific policy terms before a loss, and the insured's reliance upon such misrepresentation actually causes the insured to incur damages). No allegation exists that Defendant Lorina Marshall sold Plaintiff an insurance policy or explained the policy terms or premium calculations to Plaintiff or that Plaintiff was even a prospective buyer. She did not solicit insurance sales or handle insurance investments or underwrite or otherwise engage in any of the essential activities necessary to be "engaged in the business of insurance" such that independent liability can be assessed against her. Nor did Plaintiff rely on any unspecified misrepresentations made by Defendant because at all times relative to Plaintiff's claim he was

represented by counsel. Plaintiff's allegations against Defendant Lorina Marshall under Chapter 541 therefore fail.

11. Defendant Lorina Marshall further specifically asserts that she is entitled to dismissal of Plaintiff's cause of action pled under the Texas Deceptive Trade Practices Act ("DTPA"). By the manner Plaintiff has pled his DTPA claims, including his "unconscionable action or course of action" claim, against Defendant Lorina Marshall, each depends on the validity of Plaintiff's "violations of the Texas Insurance Code" claims. The claims are alleged "by and through" the same provisions cited by Plaintiff under Chapter 541 of the Texas Insurance Code; they therefore fail for the same reasons stated in the immediately preceding paragraph. Because Plaintiff also cannot recover against Defendant Lorina Marshall under the Chapter 541, Plaintiff also cannot recover against Defendant Lorina Marshall under the DTPA. Moreover, no allegation exists that Plaintiff purchased a good or service from Defendant Lorina Marshall, and in fact, Plaintiff did not purchase a good or service from Defendant Lorina Marshall. "Unconscionability requires that the seller take advantage of lack of knowledge, ability, experience, or capacity of a person '*at the time of the sale*'" (emphasis in original). *Tolbert ex rel. Tolbert v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 657 F.2d 262, 272 (5th Cir. 2011), citing *Parkway Co. v. Woodruff*, 901 S.W.2d 434 (Tex. 1995), (citing *Chastain v. Koonce*, 700 S.W.2d 579, 584 (Tex. 1985)). Plaintiff's unconscionability claim is premised on conduct of Defendant Lorina Marshall alleged to have occurred well after the sale of an auto policy to some entity other than Plaintiff (alleged in the petition to be "Maruti Transit Group"). Therefore, all of Plaintiff's DTPA claims fail.

12. Defendant Lorina Marshall further asserts that, for the same reasons set forth in the preceding three paragraphs, she is entitled to dismissal of Plaintiff's cause of action for

violations of Chapter 542 of the Texas Insurance Code (formerly 21.21-2 and 21.55 – as noted in Plaintiff's petition). Also, Chapter 542, by its very language, applies only to "insurers" as defined by the TIC. Plaintiff does not allege that Lorina Marshall is an "insurer," and Lorina Marshall is not an "insurer" as required by Chapter 542. As such, she cannot be liable under Chapter 542 of the Texas Insurance Code. Plaintiff's allegations under Chapter 542 do not apply to Lorina Marshall in her individual capacity and Plaintiff's cause of action under this Chapter also fails.

13. Defendant Lorina Marshall additionally asserts that Plaintiff's boilerplate, conclusory allegations pled under Chapter 541 and 542 of the Texas Insurance Code and the DTPA are insufficient to establish a cause of action against Lorina Marshall. None of the facts alleged by plaintiff as to Lorina Marshall states a violation of the DTPA or the Texas Insurance Code. Instead, the allegations stated against Lorina Marshall are legal conclusions couched as factual allegations, making all allegations insufficient to state or establish a claim against Lorina Marshall. "In order to sufficiently plead a cause of action against an insurance adjuster, a plaintiff must allege 'specific actionable conduct by the adjuster and distinguish claims against the adjuster from generic, conclusory, statute-tracking claims against the insurer.'" *Spring St. Apts Waco, LLC v. Philadelphia Indem. Ins. Co.*, W-16-CA-00315-JCM, 2017 WL 1289036 (W.D. Tex. Apr. 6, 2017), citing *Mt. Olive Missionary Baptist Church v. Underwriters at Lloyd's, London*, No. CV H-16-234, 2016 WL 4494439, at *3 (S.D. Tex. Aug. 26, 2016).

14. Defendant respectfully reserves the right at this time to amend this answer to the Plaintiff's allegations after said Defendant has had the opportunity to more closely investigate these claims, as is the right and privilege of said Defendant under the TEXAS RULES of Civil Procedure and the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant LORINA MARSHALL having fully answered herein, prays that the Court enter a take-nothing judgment in her favor, and for such other and further relief, both special and general, to which she may be justly entitled.

Respectfully submitted,

LECLAIR RYAN

By: 

BRUCE C. GAIBLE
State Bar No. 07567400
1233 West Loop South, Suite 1000
Houston, TX 77027
Telephone : (713) 654-1111
Facsimile : (713) 650-0027
Email : bruce.gaible@leclairryan.com

ATTORNEY FOR DEFENDANT,
LORINA MARSHALL

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been forwarded to all counsel of record on this the 20th day of April, 2017.

J. Scott Mechler
Davis Law Firm
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216

*Via E-Serve &
Facsimile 210-785-0806*


BRUCE C. GAIBLE

CAUSE NO. 2017CV01542

ALBERT F. CASTANEDA
Plaintiff

VS.

**TRAVELERS INDEMNITY COMPANY;
AND LORINA MARSHALL
Defendants**

IN THE COUNTY COURT

AT LAW NO. 10

BEXAR COUNTY, TEXAS

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Bruce C. Gaible, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he is the counsel of record for Defendant Lorina Marshall in the above-captioned and styled lawsuit, and that the statements contained in paragraph 4. of Defendant Lorina Marshall's Original Answer are true and correct based upon information and belief.

BRUCE C. GAIBLE

SUBSCRIBED AND SWORN to before me on this 20th day of April, 2017 to certify which

witness my hand and official seal of office. *[Signature]*

**NOTARY PUBLIC
STATE OF TEXAS**



2017CV01542
CAUSE NO. 2017CV01542

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Bexar County, County Clerk
Gerard Rickhoff
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Accepted By: Justin Longoria
/s/ Justin Longoria
Deputy Clerk

ALBERT F. CASTANEDA

vs.

**TRAVELERS INDEMNITY COMPANY
AND LORINA MARSHALL**

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IN THE COUNTY COURT OF

AT LAW NO. CC# 10

BEXAR COUNTY, TEXAS

**DEFENDANTS', THE TRAVELERS INDEMNITY COMPANY AND LORINA
MARSHALL, RULE 216 REQUEST FOR JURY TRIAL**

TO THE HONORABLE JUDGE OF THE COURT:

In accordance with the provisions of Rule 216 of the Texas Rules of Civil Procedure,
Defendants, **THE TRAVELERS INDEMNITY COMPANY AND LORINA MARSHALL**,
request that when this case proceeds to trial, it be placed on the Court's jury trial docket.

The appropriate jury fee is tendered herewith.

Respectfully submitted,

LECLAIRRYAN

/s/ Bruce C. Gaible

By: _____

Bruce C. Gaible
State Bar No. 07567400
1233 West Loop South, Suite 1000
Houston, Texas 77027
Telephone: (713) 654-1111
Facsimile: (713) 650-0027
Email: bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANTS,
THE TRAVELERS INDEMNITY COMPANY
AND LORINA MARSHALL**

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State court action 000067

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 20th day of April, 2017.

J. Scott Mechler
Davis Law Firm
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216

Via E-Serve

/s/ Bruce C. Gaible

BRUCE C. GAIBLE